



House Finance Committee

H 5012

March 4th 2021

**Statement by James Nyberg
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LeadingAge RI represents non-profit nursing homes and other long-term care providers. We are writing to express our opposition to H 5012, which would, among other things, mandate 4.1 hours of care per resident care per day. LeadingAge RI has always advocated for adequate staffing in our nursing homes and other care settings to ensure quality care to residents. Our members are also committed to supporting their dedicated staff by investing in their wages, benefits, education, and advancement opportunities. Unfortunately, this legislation does not consider the numerous challenges facing providers, including Medicaid underfunding, lack of workforce, and the COVID-19 pandemic. We strongly suggest that this bill, which is unprecedented in its scope and severity in its current form, be considered in the broader context of the challenges facing the industry and that the underlying issues warrant discussion among all stakeholders to reach a more practical solution.

As a practical matter, please be assured that Rhode Island is not an outlier when it comes to nursing home care. As you have heard in previous testimony, when factoring in all aspects of nursing home staffing data, including RNs and LPNs, as well as the care needs of residents (acuity), RI ranks 11th in the country. The estimate that we rank 42nd is based on just CNA staffing levels, so that skews the rankings. Moreover, our nursing homes do exceed national averages on infection control, and resident and family satisfaction, a critical indicator of quality of care, as well as numerous other quality measures. While we do not have a statutory staffing ratio of 4.1 hours per day, it is important to note that **no other state** has such a requirement either (only the District of Colombia). Many other states may have staffing ratios or similar requirements in statute, but they are lower than the 4.1 hours per day. This is perhaps reflective of the need to avoid imposing an unfunded mandate on nursing homes. Moreover, CMS, the federal agency that regulates nursing homes, just a few years ago when promulgating extensive new federal regulations governing nursing homes, specifically **declined to establish national staffing ratios**, given the varied nature of the industry and resident populations, and potential unintended consequences.

On a related note, there is a growing body of research about staffing and COVID outbreaks. Given the insidious nature of the virus, the first thing is that no nursing home should be blamed if there is a COVID outbreak, they are doing everything they can to protect residents and staff. But based on the research, the emerging consensus is that the number one factor in a facility outbreak is community spread, not staffing levels, quality measures, etc. Here in RI, we have seen very high staffed nursing homes experience significant outbreaks. So I would caution against using the COVID pandemic as a rationale for mandating a staffing ratio.

It should also be reiterated that our nursing homes are struggling financially, even before the COVID pandemic. There have been allegations that homes have made hundreds of millions of dollars, but this is

simply untrue. Two of the homes highlighted in a report issued by Raise the Bar are cited as having made \$3.67 million in profit over two years. As non-profits, their financial data is easily and publicly available via guidestar.org, which posts their financial reports to the IRS. According to these mandatory financial reports, these two facilities, whose annual budgets are between \$6 and \$8 million, made a combined profit of \$260,000. This is a difference of \$3.4 million! We simply have no idea where their figures came from. Ours came from the IRS. But it is safe to say that the industry is in financial distress, as evidenced by the closure of Hallworth House. So any discussion about staffing levels needs to include a discussion about the actual financial condition of the industry.

As you know, our nursing homes are already facing a workforce crisis and recruiting and training direct care workers is increasingly difficult. This is due in part to the chronic underfunding of nursing homes by Medicaid. Our members have, on average, 66 percent of their residents on Medicaid, or more. Cuts are routinely made to this program and the reimbursement doesn't keep pace with increases to the minimum wage nor the competition from other sectors such as hospitality, retail, and food service. Meanwhile, the costs of food and utilities also continue to rise for providers. In combination, these factors make it difficult to recruit and retain the workforce necessary to care for our frail elders. So a mandate of 4.1 hours per resident day would be difficult for most providers to meet unless our reimbursement system changes. We have supported efforts to ensure that our Medicaid system includes incentives to promote staffing, but until that exists, we cannot simply impose a requirement on providers, coupled with additional reporting requirements and punitive measures, without the means to achieve it.

Lastly, this bill would institute a mandatory wage pass-through for any rate increase that nursing homes may receive. While this sounds appealing, it excludes RNs, LPNs, Social Workers, Activity Directors, and others who are also critical to resident care, as well as all the other expenses nursing homes incur, such as food, supplies, insurance, utilities, and all the other costs associated with operating a 24/7, 365 day business.

Again, we appreciate the interest of the Committee in this important issue and would be willing to work with any interested stakeholders to conduct a comprehensive assessment of the current nursing home resident and staffing situation, an estimate of current and future workforce needs, and develop a plan for how to meet these needs, including funding. That is the best way to ensure that adequate staffing and compassionate care will continue to be provided at every nursing home in our state.

Thank you for your interest in our nursing home residents and staff.